

Notice of Allowability

Application No.

10/070,778

Examiner

Kathleen M Kerr

Applicant(s)

EL-SHERBEINI ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/18/04.
2. ☒ The allowed claim(s) is/are 1-11, 15 and 17.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.


THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-final Office action (mailed on May 14, 2004), Applicants filed a response and amendment received on August 18, 2004. Said amendment amended Claims 1, 5, 7, and 8 9. Thus, Claims 1-11 and 15-17 are pending in the instant Office action.

The Examiner notes that Claims 9-11 and 15-17 were withdrawn from consideration in the previous Office action; incorrect status identifiers were filed by Applicant in the amendment of August 18, 2004.

Rejoinder

2. Claims 1-8 are directed to allowable products. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), Claims 9-11 and 15-17, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Thus, previous restriction between Groups I and II (see restriction requirement mailed January 29, 2004) is herein withdrawn.

Process Claims 9-11 and 15-17 are hereby rejoined and fully examined for patentability under 37 C.F.R. § 1.104. In accordance with the Official Gazette notice, *supra*, process Claim 14, which did not depend from or otherwise include all the limitations of the allowable product since it is a method of using an inhibitor (not the polynucleotide, vector, host cell, or protein products allowed herein), has NOT been rejoined.

Priority

3. As previously noted, the instant application is granted the benefit of priority for the U.S. Provisional Application No. 60/153,293 and International Application No. PCT/US00/24437.

Information Disclosure Statement

4. The only art of record is that made of record by the Examiner in PTO-892 mailed on May 14, 2004; no IDS has been filed by Applicant.

Withdrawn - Objections to the Specification

5. Previous objection to the Abstract for not completely describing the disclosed subject matter is withdrawn by virtue of Applicant's amendment.
6. Previous objection to the specification for not clearly describing the drawings is withdrawn by virtue of Applicant's amendment.
7. Previous objection to the specification for being inconsistent in the description of SEQ ID NO:2 is withdrawn by virtue of Applicant's amendment, which is supported by the sequence listing as filed.
8. Previous objection to the specification for being incomplete having blanks is withdrawn by virtue of Applicant's amendment, which is supported by the sequence listing as filed.
9. Previous objection to the specification for being confusing as to the experimental protocol is withdrawn by virtue of Applicant's explanation on the record.

Withdrawn - Claim Objections

10. Previous objection to Claim 4 for depending from a rejected claim is withdrawn.
11. Previous objection to Claim 5 for arduous language is withdrawn by virtue of Applicant's amendment.
12. Previous objection to Claim 7 for a misplaced comma is withdrawn by virtue of Applicant's amendment.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

13. Previous rejection of Claims 1-3 and 5-7 under 35 U.S.C. § 112, second paragraph, as being indefinite for the definition of "stringent" hybridization conditions is withdrawn by virtue of Applicant's amendment removing said term.
14. Previous rejection of Claim 7 under 35 U.S.C. § 112, second paragraph, as being indefinite for being drawn to expressing a *P. aeruginosa* murF protein while the language included expressing other murF proteins is withdrawn by virtue of Applicant's amendment limiting Claim 1 to only the murF gene.
15. Previous rejection of Claim 8 under 35 U.S.C. § 112, second paragraph, as being indefinite for the phrase "having **an** amino acid sequence of SEQ ID NO:2" (emphasis added) is withdrawn by virtue of Applicant's amendment.

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16. Previous rejection of Claims 1-3 and 5-7 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant's amendment limiting the claims to an exact genus of structures.

17. Previous rejection of Claims 1-3 and 5-7 under 35 U.S.C. § 112, first paragraph, scope of enablement, is withdrawn by virtue of Applicant's amendment limiting the claims to an exact genus of structures.

Withdrawn - Claim Rejections - 35 U.S.C. § 102

18. Previous rejection of Claims 1-3 and 5-7 under 35 U.S.C. § 102(e) as being anticipated by Rubenfield *et al.* is withdrawn by virtue of Applicant's amendment requiring the specific structure of encoding SEQ ID NO:2, which limitation is not taught by Rubenfield *et al.*

EXAMINER'S AMENDMENT

19. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael Yablonsky on October 27, 2004.

Amendments to the Claims

20. The claims have been amended as follows:

a) Rewrite Claim 5 as follows:

---5. An expression vector comprising a polynucleotide encoding a polypeptide having the amino acid sequence of SEQ ID NO:2.---

b) In Claim 7, step (b), delete “in conditions under” and substitute therefor --under conditions--.

c) In Claim 9, line 4, delete “an amino acid sequence” and substitute therefor --the amino acid sequence--.

d) In Claim 15, line 3, delete “an amino acid sequence” and substitute therefor --the amino acid sequence--.

e) Cancel Claim 16.

Conclusion

21. Claims 1-11 and 15-17 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (571) 272-0931.

The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
Art Unit 1652

October 27, 2004